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IN THE

Supreme Court of the United States

October Term, 1968

No. 204

HERBERT S. BAUCH, as President of Local 832, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and ELIZABETH BOND, CLARA LEVINE, SHIRLEY FEINBERG and ELIZABETH McGEE on behalf of themselves and all other employees of the City of New York who have executed authorizations for payroll deductions in favor of Local 832, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, similarly situated,

Petitioners,

against

THE CITY OF NEW YORK, JOHN V. LINDSAY, Mayor of the City of New York, MARIO PROCACCINO, Comptroller of the City of New York, HENRY SHEMIN, Commissioner of Labor of the City of New York, and HERBERT HABER, Director of Labor Relations of the City of New York,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondents, City of New York and others, for their statement in opposition to petitioners' application for a writ of certiorari, respectfully show the following:

Question Presented

The Mayor of the City of New York agreed in collective bargaining with a majority union that he would institute a majority union dues check-off procedure for those employee organizations which have majority status in the various bargaining units; provided, however, that dues may be deducted from an employee's salary only upon his written authorization for such deduction. R38-40.[1]

Under the agreed plan, when one employee organization achieves majority status and is recognized as the exclusive bargaining agent for a unit, only that organization gets the dues check-off, during the period of its majority status, and each minority organization in that unit reverts to individual collection of dues. The purpose of the plan is to strengthen the ability of the majority unions to bargain collectively, thereby increasing the effectiveness of the collective bargaining process towards securing efficient and uninterrupted functioning of City government. R. 38, 43.

The agreed plan was upheld by Mr. Justice Gellinoff at a Special Term of the New York State Supreme Court and his decision was unanimously affirmed in each Appellate Court of the State. R. 117-129, 133; P. 1a-6a, 7a-19a. The State Courts held that: (1) The Mayor has full power under State law to enter into the collective bargaining agreement and to place the agreed plan into operation (P.

1. The letter "R", followed by numerals, refers to the page numbers of the "Papers on Appeal" submitted by the petitioners to this Court as the printed record in this case.

The letter "P" followed by numerals refers to the page numbers of the instant Petition for a Writ of Certiorari.

1a-5a); (2) The plan does not violate any State constitutional provision or law uniquely applicable to civil service employees or unions of civil service employees (P. 13a-14a); and (3) The plan is consistent with the State and Federal constitutional requirements of due process of law, equal protection of the laws, and freedom of association and speech (P. 5a-6a).

In the instant petition, the petitioners contend that the plan invades the constitutional rights of a minority union and its members to due process of law, equal protection of the laws, and freedom of association and speech, under the First and Fourteenth Amendments of the Constitution of the United States.

Statement of the Case

A. Description of the Agreed-Upon Majority Union Dues Check-off Plan

The agreed-upon majority union dues check-off plan is embodied in a proposed executive order of the Mayor.[2] R. 55-60. It provides that the union which is chosen by the majority of the workers in a city-wide bargaining unit

2. Before the Mayor's Executive Order effectuating the plan could be issued, the instant proceeding was commenced in the State Supreme Court. The parties stipulated that no steps would be taken to discontinue the existing system of dues check-off pending determination of the proceedings by the State Courts. After the final determination of the New York State Court of Appeals the City Comptroller began the preliminary steps necessary to enable the Mayor to place the plan in operation. However, upon the application of the petitioner, the Chief Judge of the New York State Court of Appeals granted a stay until July 29, 1968. However, the Order of Chief Judge Fuld preserved the right of the City to continue taking the necessary preliminary steps to implement the program.

to be the sole bargaining agent for the unit, is granted the dues check-off. This will not be a matter of contract but will be made available upon the designation or certification of such status. Dues check-off to all other organizations in any such city-wide bargaining unit will be discontinued during the period of such city-wide majority representation status.

If a bargaining agent has not been chosen for a particular city-wide bargaining unit, but a departmental bargaining agent has been selected for employees in that category, the departmental bargaining agent will have the check-off, but only until a city-wide bargaining agent is chosen. Dues check-off to every other organization in the departmental bargaining unit will be discontinued during such departmental majority status.

If no city-wide and no departmental bargaining agent have been chosen for the employees in a bargaining unit, every union having members employed in the unit will have dues check-off but only until a city-wide or departmental representative is chosen for those employees.

Thus, District Council 37 (the majority union in the city-wide unit of non-supervisory clerical positions) will not be the only organization to which dues check-off will be made under the plan. Since petitioner Local 832 alleges that it is the city-wide bargaining agent in other city-wide bargaining units (R. 10), it will have the check-off in those units, just as any other city-wide bargaining agent in any other city-wide unit.

The plan grants the privilege alike to all city-wide majority representatives in the various bargaining units. It

is based on equal treatment of all bargaining representatives. All minority unions are treated equally with each other.

Moreover, check-off remains an element of choice for each individual employee. No check-off of dues may be made without the employee's authorization. He can authorize or revoke check-off at any time. R. 59-60. He is still free to pay dues personally to any union of his choice, and to join or refrain from joining any organization. The plan does not restrain or prohibit Local 832 or any other minority organization from pursuing organizational activities and successfully gaining a sufficient number of employee adherents so as to become and replace the city-wide majority representative in the bargaining unit. R. 43, 78.

Thus, the plan merely utilizes the dues check-off facility in furtherance of the public purposes of: (a) supporting and strengthening the ability of a city-wide representative, once it has been chosen by the majority, to carry out the responsibilities and burdens for which it was chosen and to effectuate collective bargaining in the city-wide bargaining unit; and (b) if no city-wide representative has been chosen, but a departmental representative has been chosen, similarly strengthening and supporting such departmental representative until a city-wide representative is chosen; and (c) encouraging the growth and development of responsible employee organizations from which a majority representative may eventually be chosen in any bargaining unit where majority representation has not yet been achieved by the employees. R. 42.

B. Labor Relation Principles Underlying the Plan (R. 70-81)

The plan was adopted to meet a need for more effective collective bargaining. R. 70-71.

It is axiomatic that the key to prevention of employer-employee controversies is in the reaching of prompt and responsible agreements through genuine, effective collective bargaining with the true representative of the employees. Cf. *Machinists* v. *Street,* 367 U. S. 740, 750 (1960). Therefore, the collective bargaining process must be so structured as to facilitate the reaching of such agreements, without deadlocks, and preferably, without the necessity for invoking impasse, mediation or arbitration procedures. R70.

In prescribing collective bargaining exclusively with the majority organization, as the method of securing stable employee relations, the City Program confers upon the majority organization a clearly defined and delineated role in effectuating the City purpose of preserving continuity of governmental functioning. R71; R51; cf. *Machinists* v. *Street,* 367 U. S. 740, 760-761 (1960).

Thus the success of the City Employee Relations Program depends to a great extent upon the maturity, responsibility and effectiveness with which the majority representative is able to perform its representative collective bargaining role. The objective of the Program cannot be achieved by procedures which stimulate or give aid and encouragement to wasteful rival organizational campaigns disrupting stability in the bargaining relations between the City and the freely chosen majority representative. R71-72; cf. *Pennsylvania R. R. Co. Rychlik,* 352 U. S. 480,

493-494 (1956); see also testimony of William M. Leiserson in *Virginian Ry.* v. *Federation,* 300 U. S. 515, footnote on p. 546.

Experience in the private and public sectors has demonstrated that where the majority organization is given a defined role in an employee relations program, to secure the uninterrupted and efficient functioning of the employer's enterprises, it is necessary to provide arrangements which aid and strengthen that organization's ability to carry out that role. Decision of NLRB in *H. K. Porter Co. Inc.,* 59 LRRM 1462, July 9, 1965; also, cf. *Machinists* v. *Street, supra,* 367 U. S. 740, 759-762 (1960).; *Pennsylvania R. R. Co.* v. *Rychlik,* 352 U. S 480, 488-489, 494 (1956). Such arrangements in the private sector are commonly referred to as "union security" provisions. R72.

Exclusive check-off is the least onerous or severe form of union security. It has no compulsory aspects. Yet it enables the majority-chosen organization, during the continuance of its collective bargaining agency, to withstand, with less harm to its representative functioning, the effects of wasteful rivalries and disruptive minority campaigns. R72, 73-75. As such, it tends to create a climate which promotes freedom to contract and facilitates reaching of agreement.

C. Prevalence of Exclusive Majority Union Dues Check-off in Other Sectors

The Mayor's belief that the majority union dues check-off procedure will strengthen the collective bargaining process is also supported by the prevalence of the practice in private industry and other governmental bodies.

For example, as to the railroad and airline industries, the Federal Railway Labor Act contains a specific authorization for the carrier and the exclusive bargaining agent to agree on exclusive dues check-off for the exclusive bargaining agent. 45 U. S. Code §152 Eleventh (c). The Senate Report approving the law stated:

> "This right is possessed by unions representing employees in industry generally." R77.

Furthermore, the above described provision of the Railway Labor Act, like the instant plan, prohibits check-off of union dues to any union other than the majority chosen exclusive bargaining agent. *Switchmen's Union of N.A.* v. *Southern Pacific Co.*, 253 F. 2d 81 (9th Cir., 1958), cert. den. 358 U. S. 818 (1958), reh. den. 358 U. S. 896 (1958).

The Federal Government, too, has borrowed a page of experience from the private and railway sectors and has included in its employee relations program authority to agree to dues check-off solely for the organization accorded exclusive recognition or where "exclusive" recognition has not been achieved, for the organization accorded "formal" recognition. Code of Federal Regulations, Title 5, §550.304(a)(5). Where such recognition occurs, all other organizations in the unit revert to individual collection of dues. R82.

On the local government level, the New York City Transit Authority has had the exclusive check-off procedure since 1954; and the New York City Housing Authority has expressly provided for discontinuance of dues check-off to all other employee organizations in a bargaining unit

when an exclusive representative receives dues check-off under a collective bargaining agreement. R77, 83-86, 87.

As the New York State Court of Appeals said (per FULD, C.J.):

> "* * * a method of implementing union security, so widely utilized and so long tested as the one proposed by the Mayor, may not be said to lack a reasonable basis or to be unrelated to the City's legitimate purposes." P. 6a.

ARGUMENT

Applicable decisions of this Court, when applied to the questions presented by the petitioner make it abundantly clear that these questions are not of sufficient substance to warrant review by this Court.

A. Due process

This Court has uniformly held that a measure adopted to secure stability in management-employee relations conforms with the constitutional due process requirements, if the measure is relevant or appropriate to that purpose. Once it appears that there is a rational basis for concluding that the measure will aid in securing this clearly permissible objective, the "task of the judiciary ends." The question is then merely "one of policy with which the judiciary has no concern". *Railway Employees Dep't* v. *Hanson,* 351 U. S. 225, 233-235 (1955); *Virginian Ry. Federation,* 300 U. S. 515, 558-559 (1936); *National Labor Relations Board* v. *Jones & Laughlin,* 301 U. S. 41-46 (1936); *Texas & N.O.R. Co.* v. *Ry. Clerks,* 281 U. S. 548 (1930). See also, *Hudson* v. *Atlantic Coast Line R.R. Co.,* 89 S.E. 2d 441, 447

(Sup. Ct. N.C. 1955), cert. den. 351 U. S. 949 (1956); *Smith* v. *Gov't of Virgin Islands,* 320 F. 2d 136 (3rd Cir., 1964), cert. den. 377 U. S. 979 (1946); *Seagram & Sons* v. *Hostetter,* 384 U. S. 35, 46-48 (1965).

Thus, the Court has upheld as "relevant" to the permissible Congressional objectives of securing industrial peace in interstate commerce, the following measures based on the majority rule concept in labor relations:

An act authorizing the employer and the majority union to make a union shop agreement (*i.e.,* requiring all employees to become members of the majority union as a condition of continued employement) notwithstanding a State constitutional "right to work" provision to the contrary (*Hanson, supra,* 351 U. S. at pp. 233-235);

An act establishing an exclusive majority representation procedure to prevent strikes and subjecting to restraint both the right of employees to engage in group action, through a company union, interfering with the freedom of choosing the exclusive bargaining representative, and the right of the carrier to encourage and favor such group action (*Texas & N.O.R. Co.* v. *Ry. Clerks, supra,* 281 U.S. at p. 548); and

An act requiring an employer to negotiate only with the union chosen by the majority of the employees and prohibiting negotiation with any other union. *Virginian Ry. Co., supra,* 300 U. S. at pp. 558, 559; *National Labor Relations Board* v. *Jones & Laughlin, supra,* 301 U.S. at pp. 43 *et seq.*

The Record in the instant case demonstrates that the majority union check-off plan is based on well-established principles of sound labor relations and that its practice is prevalent in the private labor sector and in other governmental bodies. *Supra,* pp. 6-9; R. 67-78, 113. In the instant case, therefore, as in the above cited decisions, it is abundantly clear that the majority union dues check-off measure is relevant and appropriate to the permissible municipal goal of securing stability in governmental functioning.

Accordingly, under the above cited decisions of this Court, the adoption of the majority union dues check-off plan does not violate the constitutional requirement of due process.

B. Equal protection clause

This Court has consistently held that the equal protection clause of the Federal Constitution permits distinctions between classes of persons who are subject to State or Federal measures, if the distinctions that are drawn have "some relevance to the purpose for which the classification is made." *Rinaldi* v. *Yeager,* 384 U. S. 305, 309 (1966); *Seagram & Sons* v. *Hostetter,* 384 U. S. 35, 50 (1965); *Walters* v. *City of St. Louis, et al.,* 347 U. S. 231, 235-237 (1954); *Tigner* v. *Texas,* 310 U. S. 141, 147 (1939); *Hudson* v. *Atlantic Coast Line R.R. Co.,* 89 SE 2d 441, 452, 242 N. C. 650 (Sup. Ct., N. C., 1955), cert. den. 351 U. S. 949 (1955); *Welch* v. *New Hampshire,* 306 U. S. 79, 82-83 (1939); see also: *Matter of Patrolmen's Benevolent Assn.* v. *Wagner,* 8 A D 2d 369, 372 (1st Dept., 1959), aff'd 7 N Y 2d 813 (1959), cert. den. 363 U. S. 810 (1960).

For the purpose of strengthening the collective bargaining process, the majority union dues check-off plan draws a distinction between: (a) the organization which is chosen by the majority in a bargaining unit to be the exclusive representative for the unit, and which, by reason of that status, has defined collective bargaining responsibilities, and (b) all other organizations in the unit not so chosen and not having any such responsibilities.

Here again, the relevance of such a distinction to the goal of securing stability in governmental functioning, is attested to by the fact that the same distinction is drawn for the same purpose in the railroad, private and public labor sectors, *supra,* pp. 7-9.

Accordingly, the State Court's decision that the plan involves no denial of equal protection of the laws is in full accord with the principles established by this Court.

C. Freedom of group association

There is no merit whatsoever to the petitioner's contention that the majority union dues check-off plan violates the petitioners' constitutional right of freedom of association.

This Court has rejected an analogous contention with respect to the union shop provisions of the Railway Labor Act. *Railway Employees Dept.* v. *Hanson,* 351 U. S. 225, 236-238. Thus, in *Hanson,* the Court held that *compulsory* membership in and payment of dues to the majority organization, not accompanied by conditions of membership "forcing ideological conformity or other action in viola-

tion of the First Amendment", does not infringe the constitutional right of freedom of group association. 351 U. S. at p. 238. It follows therefore, that the majority union dues check-off plan which involves no compulsion whatsoever to pay dues to, or to join or refrain from joining any organization, does not violate any such right.

As the opinion of the New York State Court of Appeals pointed out, each of the decisions relied upon by the petitioners, such as *Bates* v. *Little Rock*, 361 U. S. 516 (1957); *NAACP* v. *Alabama*, 357 U. S. 449 (1960), and *Thomas* v. *Collins*, 323 U. S. 516 (1944), involved an affirmative prohibition upon or intrusion into the activities of an organization. P. 6a.

In the instant case, no such prohibition or intrusion exists. In the words of the New York State Court of Appeals (FULD, C.J.):

> "Nothing in the city's labor policy denies members of the petitioners' union the right to meet, to speak, to publish, to proselytize and to collect dues by the means employed by thousands of organizations of all kinds, that do not have the benefit of a dues check-off. Neither the First Amendment nor any other constitutional provision entitles them to the special aid of the city's collection and disbursing facilities." P. 6a.

CONCLUSION

The petition for a writ of certiorari should be denied.

July 11, 1968

Respectfully submitted,

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